

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 05-0383CCC

1) JOEL MORENO-ESPADA  
a/k/a JOEL (Counts One and Two)  
2) JOSE RAFAEL VELAZQUEZ-LOPEZ,  
a/k/a Bebe (Counts One and Two)  
3) ITHIER RIVERA-SANTIAGO,  
a/k/a Ithier (Counts One, Two and Three)  
4) JOSE RAFAEL ORTIZ-MELENDEZ  
5) JOSE A. RIVERA-SANTIAGO  
a/k/a Pelón (Counts One and Two)  
6) HECTOR LOPEZ-FLORES  
7) LUIS DANIEL MELENDEZ-SANCHEZ  
a/k/a Corito (Counts One, Two and Three)  
8) MIGUEL A. LOPEZ-PAGAN  
a/k/a Macho  
(Counts One, Two and Three)  
9) OMAR MORENO-ESPADA  
a/k/a Omar (Counts One and Two)  
10) RAMON L. MARTINEZ-RODRIGUEZ  
a/k/a Negro, a/k/a Spiderman  
(Counts One and Two)  
**11) JOSE RIVERA-GONZALEZ**  
a/k/a Gil (Count One)  
12) JOSE E. RIVERA-GONZALEZ  
a/k/a Geño (Count One)  
13) CARLOS JOSE CRUZ-FRANCO  
14) SONIA ESPADA-MALAVEZ  
a/k/a Coja (Count One)  
15) LIZETTE RIVERA-ESPADA  
a/k/a Pelota (Count One)  
16) YARITZA I. FRANCESCHI-MALAVE  
(Count One)

Defendants

**ORDER**

Defendant José E. Rivera-Gonzalez is to be sentenced this afternoon, October 23, 2007. His sentencing hearing has been set on two occasions after the Court's denial of his second motion to withdraw plea of guilty. The previous sentencing hearings were on June 27, 2007 and September 6, 2007. Today, hours before his sentencing, he has filed a motion submitting exhibit for sentencing which refers to a Spanish document, untranslated,<sup>1</sup> to establish that the period of probation fixed by the Commonwealth court ended on May 1, 2003. At paragraph 5 of such motion, defendant states that he submits the certificate of completion of his probation "as substantive evidence to establish that if at any moment he joined the charged conspiracy it was after May 1, 2003." Aside from the untimeliness of the motion, the same is not simply one submitting an exhibit but actually a motion for reconsideration of the Court's Order filed almost a year ago on October 26, 2006 related to defendant's objections to the Pre-Sentence Report (docket entry 242) regarding his objection to the computation of his criminal history category of III. Defendant then claimed that he did not commit this offense while on probation for a prior crime and that, therefore, the two criminal history points added for that reason should be deducted. Said objection was specifically overruled. The Court found that the term of probation for prior crimes would have expired on May 1, 2003, and that according to the government's version of facts, signed by defendant and his attorney, which is an integral part of his plea agreement, he admitted that "from on or about 1999 to November 2005, the date of this indictment, the defendant participated in the distribution of narcotics controlled substances, namely heroin and cocaine at the Las Palmas Public Housing Projects in Coamo, Puerto Rico."

The statement in his Motion Submitting Exhibit "that if, at any moment, he joined the charged conspiracy, it was after May 1, 2003" (Motion, at ¶ 5) has two obstacles that defendant must overcome. The first is that, as of this point in time, it is beyond dispute that defendant joined the charged conspiracy, having self-convicted himself by a plea of guilty. The second difficulty is that now he wishes to establish May 1, 2003 as the relevant date after having admitted in the version of facts of his Plea Agreement that he participated in the drug conspiracy from on or about 1999 to November 9, 2005. This case was filed in the year 2005, specifically November 9, 2005, more than two years after his local probation expired on May 1, 2003. There is no reason to conclude that the local authorities knew

---

<sup>1</sup> Defendant incorrectly states that he can submit the translation after the sentencing hearing, disregarding the fact that the documents must be submitted in the English language at the time of their filing for them to be properly considered by the Court.

CRIMINAL 05-0383CCC

3

about his participation in this drug conspiracy before they certified the expiration of his probation as of May 1, 2003. The fact that his criminal behavior, as charged in this case, was unknown to Commonwealth authorities does not lend support to his contention that he must have joined the conspiracy, if ever, after May 1, 2003 thereby annulling the two criminal history points for having committed this offense while on probation for a prior crime.

Considered as a very late motion for reconsideration of the Court's October 26, 2006 Order denying his objections to the calculation of his criminal history category in the PSR, the Motion Submitting Exhibit for Sentencing filed almost a year later on October 23, 2007 (**docket entry 540**) is DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on October 23, 2007.

S/CARMEN CONSUELO CEREZO  
United States District Judge